

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION**

PINKERTON'S, INC.^{1/}

Employer

and

Case 7-RC-22308

**NATIONAL UNION OF
SECURITY PROFESSIONALS**

Petitioner

and

**INTERNATIONAL UNION, SECURITY, POLICE,
AND FIRE PROFESSIONALS OF AMERICA (SPFPA)**

Intervenor

APPEARANCES:

**J. Kevin Hennessy, Attorney, of Chicago, Illinois, for the Employer.
Ellen F. Moss, Attorney, of Southfield, Michigan, for the Petitioner.
Gordon A. Gregory, Attorney, of Detroit, Michigan, for the Intervenor.**

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

¹ The name of the Employer appears as amended at the hearing.

Upon the entire record ^{2/} in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.^{3/}
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organizations involved claim to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

The Employer is a corporation engaged in providing security services to General Motors Corporation and other commercial customers. The Petitioner seeks to represent a unit of approximately 1,715 full-time and regular part-time security officers employed in those plants of General Motors Corporation (GM) and Delphi Automotive (DA) for which International Union, Security, Police, and Fire Professionals of America (SPFPA) is currently certified or recognized by the Employer; but excluding all supervisors as defined in the Act and all other employees. The Intervenor is a party to a current collective bargaining agreement with the Employer covering the petitioned-for unit, which expires October 31, 2002.⁴

The Employer and Intervenor contend that the petition must be dismissed on the following grounds: (1) the Petitioner is not a labor organization within the meaning of Section 2(5) of the Act; and (2) the Petitioner is not qualified under Section 9(b)(3) of the Act to represent guards because it is affiliated, either directly or indirectly, with Service Employees International Union, AFL-CIO (SEIU). The Petitioner likewise contends that the Intervenor is disqualified under Section 9(b)(3) of the Act because it currently represents and admits to

² The Petitioner and Intervenor filed briefs which were carefully considered.

³ The Petitioner's request in its brief that certain testimony be stricken as hearsay is denied. As this is a nonadversarial proceeding, the Board is not strictly bound to the rules of evidence. The testimony challenged by the Petitioner will be given its due weight. I also affirm the hearing officer's refusal under *Rapid Armored Corp.*, 323 NLRB 709 (1997), to allow the Petitioner to introduce evidence that the Intervenor represents and admits to membership nonguard firefighters at another employer's facilities.

⁴ The instant petition was filed during the window period prior to expiration of the contract.

membership, as part of the existing bargaining unit, fire prevention officers and/or fire officers who are not guards.⁵

I find that the Petitioner is a labor organization within the meaning of Section 2(5) and is not, either directly or indirectly, affiliated with SEIU and is therefore not disqualified from representing the petitioned-for employees. I further find that the Intervenor is not disqualified by Section 9(b)(3) from representing the current bargaining unit as it has not been shown by clear and definitive evidence that the existing bargaining unit consists of guard and nonguard employees.

The Employer employs approximately 1,269 security officers at 63 GM facilities and 467 security officers at 20 DA facilities, located throughout the United States. According to their job description, the primary functions of the security officers “include protection against fires, misappropriation and malicious destruction of property, permitting entrance of only authorized persons and vehicles, protection of confidential information, conducting investigations, assisting in the enforcement of shop rules and regulations, maintaining order, observing and reporting irregular conditions and unsafe practices, and responding to emergency situations....”

In about April or May 2002, Prewitt Organizing Fund (POF) commenced a campaign to organize the Employer’s security officer employees across the country. POF, which is not itself a labor organization, is a non-profit organization engaged in assisting established and start-up unions in their organizing activities. POF is funded by individual supporters as well as several different organizations, including several AFL-CIO affiliated labor organizations. As part of its organizing activities, POF hired Hinton Henderson as a union organizer.⁶ Initially, Henderson visited a number of Employer facilities throughout the country to generally probe employees’ dissatisfaction with their present union and their desire to establish a new union. During this period, before the Petitioner was created, the nationwide organizing campaign was known as Front Line Project, which is a separate charitable, non-profit organization that was apparently involved in the initial funding of the campaign.

Upon determining that there was some interest among the Employer’s employees to be represented by a union other than the Intervenor, Henderson and

⁵ The Petitioner stipulated to the inclusion in the petitioned-for unit of all employees currently represented by the Intervenor at the facilities in question. If, however, Petitioner were correct in its assertion as to Intervenor’s Section 9(b)(3) status, then Petitioner’s own status would be subject to attack if it becomes the certified bargaining representative.

⁶ While Henderson was employed by POF, the record indicates that his paycheck was issued by Direct Organizing Group, which is directly related to POF.

his POF organizing staff created the Petitioner and proceeded with organizing the Employer's employees on behalf of the Petitioner, which included communicating with employees regarding representation for purposes of collective bargaining by the Petitioner; collecting union authorization cards from employees; and soliciting employees to collect cards on its behalf. After the creation of the Petitioner, Front Line Project was no longer involved in the campaign. Henderson concentrated his organizing efforts specifically among the Employer's Michigan employees currently represented by the Intervenor and became the lead organizer of the Michigan campaign, along with Petitioner/POF union organizers Joe Martin, Lawrence Martin, and Rick Matthews.

On August 22 and 23, 2002, Petitioner's organizers Joe Martin, Lawrence Martin, Matthews, and Henderson met with unit employees and SPFPA representative Steve Maritas, who portrayed himself as unit employee, for the purpose of discussing possible representation of the employees by the Petitioner. According to SPFPA representative Maritas and bargaining unit employee Matthew Sandlin, Petitioner representatives Joe Martin, Lawrence Martin, Matthews and Henderson stated during these meetings that Petitioner was being funded through POF by the AFL-CIO. Petitioner's representatives further stated, that although SEIU could not be directly involved in the Petitioner's organizing campaign at the present time because it was a nonguard union, once the Petitioner won the election and became the certified representative of the employees, the Petitioner could thereafter affiliate with SEIU and SEIU could then be directly involved in collective bargaining negotiations with the Employer.

Section 2(5) of the Act defines "labor organization" as follows:

The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

Regarding the Intervenor's and Employer's assertion that the Petitioner is not a labor organization within the meaning of Section 2(5) of the Act, the Board has held that in order to be a labor organization under Section 2(5), two things are required: first, it must be an organization in which employees participate; and second, it must exist for the purpose, in whole or in part, of dealing with employers concerning wages, hours, and other terms and conditions of employment. *Alto Plastics Mfg. Co.*, 136 NLRB 850, 851-852 (1962). It is well settled that the existence of elected officers and a constitution or bylaws is not determinative in analyzing whether an organization or association is a labor

organization within the meaning of the Act. *Yale New Haven Hospital*, 309 NLRB 363 (1992); *Armco, Inc.*, 271 NLRB 350 (1984); *Steiner-Liff Textile Products Co.*, 259 NLRB 1064 (1982). Nor is labor organization status based on proof of specific instances that the organization has dealt with an employer. *Armco, Inc.*, supra at 350; *Steiner-Liff Textile Products Co.*, supra at 1065. Rather, the intent of the organization, and not what activities the organization actually performs, is critical in ascertaining labor organization status, regardless of the progress of the organization's development. *Edward A. Utlaut Memorial Hospital*, 249 NLRB 1153, 1160 (1980).

The record demonstrates that the Petitioner is a newly formed organization in which employees participate and which exists for the purpose of representing the Employer's employees in negotiating with the Employer over wages, hours, and other terms and conditions of employment. Although at the time of the hearing the Petitioner had no constitution, bylaws, dues structure, previous collective bargaining experience, or any reports on file with the U.S. Department of Labor under the Labor Management Reporting and Disclosure Act, it is well established, based on the cases cited above, that such structural formalities are not prerequisites to labor organization status within the broad meaning of in Section 2(5). *Yale New Haven Hospital*, supra at 363. Accordingly, I find that the Petitioner satisfies the definition of a labor organization set forth in Section 2(5) of the Act.

Section 9(b)(3) of the Act states in pertinent part:

(b) The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit or subdivision thereof: *Provided*, That the Board shall not... (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership or is affiliated directly or indirectly with an organization which admits to membership employees other than guards.

Regarding the Intervenor's and Employer's assertions that Petitioner is not qualified under Section 9(b)(3) of the Act to represent guards because it is affiliated, either directly or indirectly, with SEIU, it appears that during its formative stage, the Petitioner may have received some financial aid and support

from AFL-CIO unions, including the SEIU, which admit to membership employees other than guards. However, there has been no showing the Petitioner has any direct or indirect affiliation with any nonguard union.

The Board has repeatedly held that a union is indirectly affiliated with another if it is “not free to formulate its own policies and decide its own course of action independently.” *Wackenhut Corp. v NLRB*, 178 F.3d 543, 554 (D.C. Cir. 1999), quoting *International Harvester Co.*, 145 NLRB 1747, 1749 (1964). Mutual sympathy, common purpose, and assistance between such unions is not, standing alone, sufficient to show an indirect affiliation. When a guard union is in its formative stages, and has received logistical and clerical assistance and sundry advice from other established unions, the Board has determined that the spirit of the Act to insure that the employer maintains a faithful pool of employees to protect its business and property is not violated. In sum, the Board’s interpretation of the term “indirectly affiliated,” as reflected in its cases, requires a substantive bond that binds the two unions in management and policy, so that the guard union cannot determine its own course without approval of the nonguard union. *Wackenhut Corp. v NLRB*, supra at 554.

While in the record arguably suggests that the Petitioner, once it passes its formative stages and attains some degree of maturity, may affiliate with the SEIU, at this time this is mere speculation. Any or suggestions in the record that the SEIU intends to continue to render assistance and advice of an unspecified nature to the Petitioner does not warrant withholding from the Petitioner the opportunity to be certified as representative of the Employer’s security officers through a Board-conducted election. Rather, in the event the Petitioner is certified and is then shown to have accepted material assistance from the SEIU, or any other nonguard union for that matter, sufficient to constitute indirect affiliation, the Board will entertain a motion to revoke the certification. *Bonded Armored Carrier*, 195 NLRB 346 (1972). I conclude that any funding or advice Petitioner received, during the formative stages did not compromise its independence.

Regarding the assertion that that the Intervenor is disqualified from representing the existing bargaining unit under Section 9(b)(3), the Petitioner argues that three unit employees regularly employed by the Employer as fire prevention officers at the GM Saginaw Metal Castings plant and four unit security officer employees assigned to the fire officer post at the GM Orion Assembly plant, do not qualify as statutory guards. It is unknown whether there are other employees at the other 61 GM or 20 DA plants who are assigned as fire prevention officers or fire officers.

The collective bargaining agreement between the Employer and Intervenor does not contain any specific job classification of fire prevention officer or fire officer. Rather, the collective bargaining agreement refers to only the classification of security officer, which encompasses assignment to fire prevention duties. Security officers assigned to the fire prevention post are responsible for inspecting plant fire equipment,⁷ issuing building and welding permits to outside contractors, and responding to emergency medical and fire emergencies. When officers are not engaged in these duties, they are considered to be on standby and are responsible for general patrol throughout the plant. While engaged in general plant patrol, they are responsible, for enforcing plant rules and regulations, and removing and apprehending unruly employees. It appears that there is one security officer designated for fire prevention duties per shift. As fire prevention employees security officers wear a standard uniform consisting of coveralls while as security officers they wear a dress security uniform.

The employees assigned to the fire prevention posts possess the same badge, two-way radio, flashlight, and CPR mask as regular security officers; are under the same supervision, wage structure, and work schedule; and share the same locker room, parking facilities, and training programs. While security officers serving as the fire prevention employees at the GM Saginaw Metal Castings plant appear to engage in fire prevention work on a more regular basis than those at the GM Orion Assembly plant, who only work in fire prevention one day per week at the most,⁸ the record is clear that security officers serving as fire prevention employees regularly substitute for other security officers while they are on break or absent from work.

In finding that security officers serving as fire prevention employees in question are properly includable in the existing unit, I rely on the Board's policy requiring that the noncertifiability of a guard union must be shown by clear and convincing evidence. *Burns Security Services*, 278 NLRB 565 (1986). The record is clear that these employees in question, who are regularly or occasionally assigned to plant fire prevention duties, are classified as security officers under the current collective bargaining agreement and share the same hours, wages, and working conditions as the undisputed Section 9(b)(3) security officers. The Orion Assembly fire prevention employees serve in that capacity, at most, one day per week and the Saginaw Metal Castings fire prevention employees regularly substitute for and work overtime as security officers. The Board has held that the

⁷ These inspections occur on daily, weekly, monthly, quarterly, semi-annual and annual bases.

⁸ The Orion Assembly employee who testified at the hearing sated that he primarily works as a truck gate security officer, is certified to be a fire officer, and is assigned to fire prevention post based on his certification. The record further indicates that in order to be certified as a fire officer, the employee must successfully pass a test administered by the plant fire chief (it is not clear if there is a fire chief position in each plant covered by the collective bargaining agreement).

performance of guard duties need not be the employees' only function in order to attain Section 9(b)(3) guard status. *MGM Grand Hotel*, 274 NLRB 139 (1985). See also, *McDonnell Aircraft Co. v. NLRB*, 827 f.2d 324 (8th Cir. 1987). Thus, I cannot conclude that the Petitioner has shown by clear and convincing evidence that the fire prevention employees employed at GM's Saginaw Metal Castings plant or Orion Assembly plant are not properly included in the current bargaining unit as non-guard employees. For the reasons stated above, I conclude that these employees in question who are assigned as fire prevention officers and/or fire officers are properly included in the current bargaining unit.

Based on the foregoing, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act, and I hereby direct an election therein:

or All full-time and regular part-time security officers employed in those plants of General Motors Corporation and Delphi Automotive for which the International Union of Security, Police and Fire Protection Professionals of America (SPFPA) is currently certified recognized by the Employer; but excluding all supervisors as defined in the Act and all other employees.

Those eligible to vote shall vote as set forth in the attached Direction of Election.

Dated at Detroit, Michigan, this 10th day of October 2002.

(SEAL)

/s/ Stephen M. Glasser
Stephen M. Glasser
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National Labor Relations Board
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Classification Numbers

177 3901
177 3925 6000
177 3925 8000

339 7575 8125
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